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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

AUG 21 2003

File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

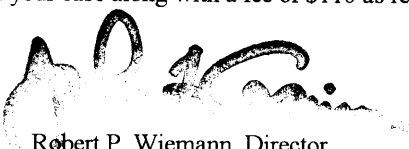
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a nun. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a nun immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its financial ability to provide for the beneficiary.

On appeal, the petitioner asserts that the beneficiary has over two years of experience as a nun, and that the petitioner is able to support the beneficiary.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The

regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a nun throughout the two-year period immediately preceding that date.

Rt. Rev. Ivan A. Krotec of the petitioning church states that the beneficiary “was a nun with a religious commitment, commencing January 25, 1992.” The petitioner submits a letter from Confessor Roman Masliy of St. Trinity Church in Ukraine, dated April 27, 2001, stating that the beneficiary “was a conventual at the Virgin Mary convent . . . from 25.01.92 till 28.08.2000.” Other documentation shows that the beneficiary “completed a four year summer catechitical course” in 1996, and is now qualified to teach catechism. In 1991, the petitioner earned the qualification of “technician constructor” after four years at the Chervonohrad Mining College.

Noting that the above evidence covers the beneficiary’s activities only through August 8, 2000, the director requested evidence to show that the beneficiary worked as a nun from August 8, 2000 through April 30, 2001. The director also requested “evidence showing the beneficiary is a tuncured nun.”

In response, Rt. Rev. Krotec states “[w]e cannot provide you with any additional documents or ascertain the meaning of ‘tuncured’ nun as per your letter.”¹ With regard to the dates and nature of the beneficiary’s duties, Rt. Rev. Krotec states that the necessary information can be found in “[t]he letter received from St. Trinity Church in Ukraine, dated April 27, 2001.” As noted above, the letter from St. Trinity Church discusses only the beneficiary’s work from January 25, 1992 to August 28, 2000. This leaves an eight-month gap in the beneficiary’s activities during the two-year period immediately prior to the petition’s May 1, 2001 filing date.

The director denied the petition, stating that the record does not establish that the beneficiary had taken her final vows as a nun at least two years prior to the petition’s filing date. The director also stated that the petitioner must show not only that the beneficiary was qualified to be a nun for

¹ Internet and dictionary searches for the word “tuncured” as it relates to nuns yielded no helpful information. Some monks are “tonsured,” but this term refers to the partial shaving of the head, a ritual not performed on nuns.

the entire relevant two-year period, but also that the beneficiary was actually engaged in that capacity for that entire period.

On appeal, Rt. Rev. Krotec repeats the assertion that “the letter issued from St. Trinity Church in the Ukraine indicated that the beneficiary was a tuncured nun from January 25, 1992, until August 28, 2000, well in excess of the two-year requirement.” The beneficiary may have served as a nun for more than two years, but the law requires more than simply demonstrating two years of experience. The plain wording of both the statute and the regulations indicates that the alien must have served in the religious occupation or vocation continuously during the two-year period immediately preceding the filing of the petition. Thus, the petitioner must establish the beneficiary’s continuous service from April 1999 through April 2001. The evidence previously submitted by the petitioner does not account for the beneficiary’s whereabouts or activities between August 28, 2000 and April 30, 2001, a span that covers fully one-third of the two-year qualifying period ending April 30, 2001.

On appeal, the petitioner submits a translation of a certificate from Father Roman Masliy of Holy Trinity Church (apparently a variant translation of St. Trinity Church), dated September 14, 2002. The Ukrainian-language certificate is not in the record. The translation lists the various vows that the beneficiary has taken as a nun; her sixth vow was taken on August 28, 1999, less than two years before the petition’s filing date. Father Masliy states that the beneficiary “stayed from January 25, 1992 to August 28, 2000 at Nunnery,” and “[f]rom August 28, 2000 till present time she was staying at Nunnery.”

Father Masliy does not identify the nunnery where the beneficiary purportedly stayed after August 28, 2000. The petitioner had previously indicated that the beneficiary has been in the United States since entering with a visitor’s visa on September 5, 2000, and therefore it is not credible to assert that the beneficiary was at the nunnery of Holy Trinity Church in Ukraine until September 2002. The I-360 petition form lists an address for the beneficiary. The petitioner has not shown that this address corresponds to a nunnery in the United States. If it does not, the assertion that the beneficiary resided at a nunnery after August 28, 2000 has no credibility whatsoever, even if a priest in Ukraine were in a position to attest, first-hand, to the beneficiary’s residential situation thousands of miles away in the United States.

For the above reasons, the petitioner has failed to demonstrate that the beneficiary was continuously engaged as a nun during the two-year period immediately prior to the petition’s filing date.

The other cited ground for denial concerns the petitioner’s ability to support the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual

reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

Rt. Rev. Krotec indicates that the beneficiary will receive "room and board from our Church in addition to a compensation that will allow her to maintain herself," but he does not specify the amount of this compensation. He also states "[e]nclosed please find documents as evidence that our Church has a financial ability to support" the beneficiary, but he does not identify these documents. The submission accompanying his letter contains no financial documentation about the petitioner. The accompanying documents are all about the beneficiary from other entities, or about the religious denomination in general.

The director again requested evidence of the petitioner's ability to support the beneficiary, noting the omission of financial documents from the petitioner's prior submission. The director also requested "the number of individuals currently receiving compensation" from the petitioner. In response, the petitioner has submitted a balance sheet showing current assets of \$448,850.75, including \$87,529.04 in cash and investments, as of December 31, 2001. The petitioner indicated that the response also included "the number of individuals currently receiving compensation" but no such information is in the record.

In denying the petition, the director found that "an unaudited balance sheet" is not sufficient to establish the petitioner's financial status. The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

On appeal, Rt. Rev. Krotec states "this letter will serve as our statement that the Church has a financial ability to support the beneficiary." 8 C.F.R. § 204.5(g)(2) defines only limited circumstances in which a letter is acceptable in lieu of financial records. The petitioner must employ at least 100 workers, and the statement must be from a financial officer of the organization. In this instance, the director specifically instructed the petitioner to specify "the number of individuals currently receiving compensation," but the record contains no documentation addressing this request. Therefore, there is no basis to conclude that the petitioner employs 100 or more people. Furthermore, Rt. Rev. Krotec has not established that he is a financial officer of the petitioning church.

Based on the above, the petitioner has not submitted acceptable documentation to establish its financial ability to provide for the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.